

HOUSE BILL 3041
By Hackworth

AN ACT to amend Tennessee Code Annotated, Title 56;
Title 63; Title 67; Title 68 and Title 71, relative to
health care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding
the following as a new part 29:

67-4-2901. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue;

(2) "Department" means the department of revenue;

(3) "Employee" means an employee of the employer for the purposes of
Tennessee Code Annotated, Title 50, Chapter 7;

(4) "Employer" means any employer who is subject to the provisions of
Tennessee Code Annotated, Title 50, Chapter 7. In no event shall "employer"
include an entity with fewer than seventy-five (75) employees;

(5)

(A) "Gross receipts," for the purpose of taxes administered under
this part, means total receipts before anything is deducted, but does not
include receipts from incidental business when such incidental business,
if separately carried on, would not be subject to a tax measured by gross
receipts under the provisions of parts 2-6 of this chapter;

(B) "Gross receipts" does not include state and local sales and other taxes collected from customers and remitted to the respective taxing authorities by utilities; and

(6) "Incidental business" means a business carried on separately and not a part of the business made the subject of privilege taxation.

67-4-2902. In addition to any other privilege tax imposed by this chapter, the general assembly declares that it is a taxable privilege in this state for an employer to engage in business and to use employees in such business.

67-4-2903. The tax herein imposed as a health preservation contribution is a state tax for state purposes only, and no county or municipality or taxing district shall have power to levy any like tax. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the required return. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited to the state general fund.

67-4-2904.

(a) The supervision and collection of the tax imposed by this part is under the direction of the department of revenue, and the department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee franchise tax return, a copy of the federal tax forms filed with the internal revenue service for the same tax year.

(c) All employers subject to the tax imposed by this part shall register with the department of revenue by completing and filing a registration information

form prescribed by the department. Such form shall be filed with the department within sixty (60) days after January 1, 2007, or within fifteen (15) days after the date the employer becomes subject to the tax, whichever date occurs last.

67-4-2905.

(a) This section establishes a health preservation contribution as a privilege tax for certain employers in this state.

(b) Each employer with seventy-five (75) or more employees, shall pay, as required by this part, a contribution for each employee computed by multiplying the wages paid each employee by six percent (6%). For the purposes of this section, "employee" shall not include the following employees of any employer:

(1) Any employee who has been employed by such employer for fewer than ninety (90) days from date of hire;

(2) Any employee who normally works for fewer than thirty (30) hours per week; provided, however, that any head of household who has dependent children living at home and is working at least twenty (20) hours per week or any employee having worked at least five hundred twenty (520) hours in the prior six (6) months shall be considered to be an employee for the purposes of this section;

(3) Any employee who is hired to perform a service for a period of less than five (5) months;

(4) Any seasonal agricultural employee, who for the purposes of this section shall be defined as an individual who is employed in agricultural employment of a seasonal or other temporary nature; and

(5) Any employee who is covered by a group or nongroup health benefit plan which is financed without any participation by the employer, or who is enrolled in the medicare program.

Each employee as defined in this part shall be presumed to be an employee as included in this section unless the employer certifies to the commissioner, in such form and manner as the commissioner may require, that such employee should not be included under the provisions of this section. Each employer may require any employee to verify the employee's health insurance status pursuant to such rules and regulations promulgated pursuant to this act. No employer may require an applicant for employment to disclose the applicant's health insurance status or that of the applicant's spouse, dependents, or other family members. In no case may an employer discriminate against such applicant on the basis of such applicant's health insurance status. Any person aggrieved by a violation of this subsection may institute within three (3) years of such violation a civil action for injunctive relief and for any damages incurred. Any employer found to be in violation pursuant to the action of the aggrieved person shall reimburse such reasonable attorney fees and court costs incurred in the protection of rights granted as shall be determined by the court.

(c) An employer may deduct from the amount owed for each employee under subsection (b) up to one-half of its average expenses per employee for providing health insurance coverage or other health care benefits for its employees, allowable for the current quarter by the internal revenue service as a deductible business expense; provided, that any nonincorporated employer may deduct from the amount owed for each employee under subsection (b) one-half of its average expenses per employee for providing health insurance coverage or

other health care benefits for its employees as reported and allowed pursuant to rules and regulations promulgated by the commissioner; and provided further that such deduction for any employer shall not reduce the contribution for any employee below zero. The provisions of this subsection shall only apply to those employees who are currently enrolled in TennCare or were enrolled in TennCare for more than sixty (60) days within five (5) years of any such deduction.

(d)

(1) For the purposes of this section, the term “wages” shall not include that part of remuneration which, after remuneration equal to the medical security wage base with respect to employment with such employer has been paid to an individual during the calendar year, is paid to such individual during such year. For the purposes of this subsection, remuneration shall include remuneration paid to an individual during the calendar year with respect to employment with a transferring employer, as that term is defined by the commissioner by rules and regulations.

(2) For the purposes of this section, the term “medical security wage base” means twenty-three thousand dollars (\$23,000) for the calendar years 2007 through 2009, inclusive. For each subsequent calendar year the medical security wage base shall equal the product of the medical security wage base for the previous calendar year plus the health insurance inflation rate for the prior calendar year, as determined by the commissioner by rule and regulation.

(e)

(1) The provisions of this section shall not apply to an employer who is subject to the provisions of this act, until it has been an employer for less than a twelve (12) consecutive month period.

(2) During the first calendar year in which this section applies to an employer newly subject to this chapter pursuant to subdivision (1), such employer's medical preservation contribution shall be computed by substituting in subsection (b) the words "four per cent" for the words "six per cent".

(3) During the second calendar year in which this section applies to an employer newly subject to this chapter pursuant to subdivision (1), such employer's medical security contribution shall be computed by substituting in subsection (b) the words "eight per cent" for the words "twelve per cent".

(4) The provisions of this section are subject to appropriation in the general appropriations act and do not constitute an entitlement to any individual.

67-4-2906. The department is authorized to develop by rule and regulation a means for employers to make estimated periodic payments of the tax on a monthly or quarterly basis and to provide for additional payments, refunds or penalties with the filing of the required return.

67-4-2907. The department may authorize any filings required by this part to be attached to an employer's franchise and excise tax returns.

67-4-2908. The privilege tax return required by this part shall be filed in the same manner as provided in §67-4-2015 for franchise and excise tax returns.

67-4-2909.

(a) The commissioner is empowered to certify to the secretary of state the name of any taxpayer who fails or refuses to file any statement or tax return required by this part, or to pay any fee or tax herein required. No certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(b) At the time of such certification to the secretary of state, the commissioner shall give notice to the taxpayer of the action taken. Thereupon, the charter or certificate of such taxpayer or its domestication in Tennessee shall stand as automatically dissolved or revoked, and the secretary of state shall note such revocation or dissolution upon the secretary of state's records.

(c) At any time after the date of revocation or dissolution, such charter or certificate or domestication may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the business name has not been taken by another taxpayer.

67-4-2910. Any tax credit received by an employer pursuant to Section 67-4-2905 for an employee shall terminate after five (5) years for each such employee.

67-4-2911. The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2007, the public welfare requiring it.